

When persons sell tangible personal property which they are not otherwise engaged in selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a PLR.)

November 6, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of October 12, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This is a request for a private letter ruling under the provisions of 2 Illinois Administrative Code Section 1200.110 on behalf of BUSINESS and its subsidiary corporation, COMPANY regarding COMPANY's pending purchase of one used AIRCRAFT, manufacturer's serial number ####, Registration Number #### ('Aircraft'). Said Aircraft acquisition, which is tentatively scheduled to occur in the State of Illinois on or about November 15, 2000, is the subject for this request for a private letter ruling. Specifically, a ruling is requested that the transaction be treated as exempt from both the Illinois Retailers' Occupation (Sales) Tax and the Use and Occupation Tax in accordance with the isolated or occasional sales exemption.

Representations:

1. BUSINESS, COMPANY and TAXPAYER have disclosed their identities and described the business transactions between them to fully comply with the requirements of 2 Illinois Administrative Code Section 1200.110.
2. This Private Letter Ruling is sought to apply to the present period and future periods.
3. There is no claim to be filed and this issue is not under audit by the Illinois Department of Revenue ('Department').

4. Neither BUSINESS, COMPANY nor TAXPAYER have previously requested a letter ruling from the Department regarding the application of the isolated or occasional sale exemption to the sale of an aircraft between them.
5. COMPANY and TAXPAYER specifically request that all information identifying the parties, including the Aircraft be deleted from the published version of the letter which will be available to the public.

Statement of the Facts

COMPANY is a wholly owned subsidiary corporation of BUSINESS. Both corporations were formed under the laws of the State of Delaware. COMPANY has entered into an aircraft purchase and sale agreement ('Agreement'), with TAXPAYER on September 21, 2000 (attached), wherein TAXPAYER has agreed to sell, and COMPANY has agreed to purchase the Aircraft. The date of closing of the transaction is to occur on or about November 15, 2000. Both COMPANY and TAXPAYER have reserved the right to utilize Exchange Accommodators to facilitate their respective like-kind exchanges for federal income tax purposes. COMPANY intends to utilize the options available under Regulation 1.1031 or under Rev. Proc. 2000-37, depending upon the timing of the sale of the to-be-relinquished property under a tax-deferred exchange.

TAXPAYER is a wholly owned subsidiary of a company that owns and operated Formula One racing automobiles. TAXPAYER is the holding entity of the parent corporation's aviation assets. TAXPAYER typically purchases an aircraft for the purpose of using same for its transportation needs during a racing season. At the end of the annual racing season, TAXPAYER sells the aircraft and purchases another aircraft for use during the following season. Each successive purchase would be considered an 'upgrade' in that the subsequently purchased aircraft would be either newer, better equipped, larger, etc. As a result, TAXPAYER purchases and sells its aviation asset on an average of one purchase and one sale each year. However, the main business of TAXPAYER is to function as the principal corporation's transportation company, and not to be engaged in aircraft sales or to act as an aircraft dealer in the State of Illinois.

As stated above, the Aircraft currently contains a COUNTRY registration. A critical part of the transaction will include the de-registration of the Aircraft from the COUNTRY, the inspection of the Aircraft by a Federal Aviation Administration Designated Airworthiness Representative to ensure that the Aircraft meets the appropriate standards of airworthiness under the Laws of the United States, and the application for, and issuance of a United States Certificate of Airworthiness, and Registration to COMPANY. Once the de-registration application is made from the COUNTRY, the Aircraft must land at its first point of landing in the United States at a facility able to conduct the required inspections to facilitate the process of obtaining the US Certificate of Airworthiness and subsequent registration to the new owner, COMPANY.

CORPORATION, is the location and facility tentatively chosen by COMPANY, and agreed to by TAXPAYER, to conduct the required inspections, and where Aircraft will be located at the time title transfers from TAXPAYER to COMPANY, through the parties' respective Exchange Accommodators. Once the transaction is completed, COMPANY may have additional services and maintenance performed by CORPORATION.

However, upon completion of the inspections, maintenance and service following the closing of the purchase and sale herein described, COMPANY intends to remove the Aircraft from the State of Illinois and permanently base the Aircraft in the State of Colorado. COMPANY may cause the Aircraft to return to CORPORATION in the future for periodic scheduled and special maintenance on the Aircraft. The Aircraft may return periodically to the State of Illinois as COMPANY and BUSINESS conduct their normal business.

Ruling Requested

BUSINESS requests a ruling that the single annual sales of aircraft by TAXPAYER does not constitute TAXPAYER being engaged in the business of selling aircraft or habitually being engaged in the sale of aircraft. Consequently BUSINESS's purchase of the Aircraft from TAXPAYER, by and through its Exchange Accommodator, in the State of Illinois, is an isolated or occasional purchase and sale and not subject to the Retailers' Occupation (Sales) Tax or the Use and Occupation Tax.

Authority

35 ILCS 105/2 and 35 ILCS 120/1

'The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail...'

86 Illinois Administrative Code 130.110

'(a) Since the Act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability.'

86 Illinois Administrative Code, Section 150.101.

'(c) However, if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply to the use of such tangible personal property in this state.'

'(d) For example, a purchaser of tangible personal property from a seller who qualifies as an isolated or occasional seller so as not to incur Retailers' Occupation Tax liability is not liable for the Use Tax when using such property in Illinois.'

Trans-Air Corporation v. Department of Revenue, 86 Ill. App 3d 750 (1980)

Letter Rulings: 86-0592, 87-0737, 88-0039, 90-0093, 90-0662, 91-618, 91-0739, 94-0272, 95-0138, 95-0296 and 97-0236

Contrary Authority

BUSINESS and COMPANY are unaware of any Illinois authority contrary to the position that the sale of the aircraft to COMPANY would qualify as an exempt occasional sale.

Argument

The Department, as evidenced by the above listed letter rulings, has long recognized the applicability of the isolated or occasional sale exemption to aircraft. TAXPAYER is not a retailer and is not in the business of selling aircraft at retail. Therefore, the sale of the Aircraft to COMPANY qualifies as an occasional sale which is exempt from the Retailers' Occupation (Sales) Tax and the Use and Occupation Tax.

If you anticipate issuing a Private Letter Ruling which does not agree with the ruling requested, I would appreciate the opportunity to meet or talk with you to discuss the issues in greater detail before an adverse ruling is issued.

Please call me at ##### if you have any questions.

As time is of the essence, your prompt response to this request is appreciated.

Section 1 of the Retailers' Occupation Tax Act states in part that:

"The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, . . . does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act..." 35 ILCS 120/1.

Because of this statutory provision, persons (as defined in the Retailers' Occupation Tax Act) do not incur Retailers' Occupation Tax liabilities upon gross receipts from such occasional sales and purchasers do not incur Use Tax liabilities. See 86 Ill. Adm. Code 130.110, enclosed.

As a general proposition, the occasional sale exemption is available when a person purchases an item and then, after using the item, disposes of it by selling it. Please refer to 86 Ill. Adm. Code 130.110. Based upon the facts presented in your letter, we conclude the sale of the AIRCRAFT by TAXPAYER to COMPANY is an occasional sale. Therefore TAXPAYER does not incur Retailers' Occupation Tax liability and COMPANY does not incur Illinois Use Tax liability. Your letter references utilization of a 1031 exchange procedure. Please be advised that if this procedure is used, this letter ruling will cease to have binding effect. This letter ruling specifically does not address liabilities under a 1031 exchange. If you wish to obtain a Private Letter Ruling regarding use of a 1031 exchange procedure, we urge you to submit the information required under Section 1200.110 (b) for those facts.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.